

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEC 27 2011

PRO SE OFFICE

Eugene T. King, Jr.,
Movant,

vs.

Eileen Kelly, Chief, U.S. Probation Officer, EDNY
Respondent.

CV 11 - 6347

Case No.:

AMON CHJ.

CHOFELSKY

MOTION REQUESTING AN ORDER PURSUANT TO THE PRIVACY ACT OF 1974

COMES NOW the movant, Eugene T. King, Jr., *pro se*, pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552 (a), *Haines v. Kerner*, 404 U.S. 519 (1972) and states:

1. Movant is a federal parolee under the supervision of the United States Probation Office, Eastern District of New York.
2. On September 26, 2011, movant mailed a letter to Eileen Kelly, (Kelly) Chief U.S. Probation Officer, Eastern District of New York, requesting permission, pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552 (a), "to review the file pertaining to him at the United States Probation Office, Eastern District of New York." (A copy of letter September 26, 2011 annexed hereto as **Exhibit A.**)
3. When, on October 8, 2011, Kelly had not responded to movant's letter as required by the provisions of said statute and in violation thereof, movant mailed another letter, via certified mail, to Kelly, again requesting permission to review the files pertaining to him located in the E.D.N.Y. Probation Department. (See copy of letter dated October 8, 2011 annexed hereto as **Exhibit B.**)
4. After Kelly had failed and refused to respond to either of the letters delineated hereinabove, movant mailed a letter complaint, dated on or about November 12, 2011, to Judge Thomas F. Hogan, Director, Administrative Office of the United States Courts in an "attempt to exhaust administrative remedies regarding the refusal and failure of the Eastern District of New York, U.S. Probation Department's Chief U.S.P.O., Eileen Kelly, to comply with the provisions of the Privacy Act of 1974, 5 U.S.C. §552a, regarding movant's request that was filed to review and copy portions of

my files thereat." (See copy of letter dated November 12, 2011 annexed hereto as **Exhibit C**).

5. When no response to any of movant's requests were received more than one month after the complaint, *i.e.* Exhibit C was filed, in violation of the provisions of the applicable statute, this complaint follows.

MEMORANDUM OF LAW

"We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Haines v. Kerner*, 404 U.S. 519, 521 (1972) *Conley v. Gibson*, 355 U. S. 41, 355 U. S. 45-46 (1957). See *Dioguardi v. Durning*, 139 F.2d 774 (CA2 1944).

The Privacy Act of 1974 , Public Law No. 93-579, (Dec. 31, 1974), states, in pertinent part, "Each agency that maintains a system of records **shall¹ (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system,** permit him and upon his request, a person of his own choosing to accompany him, **to review the record and have a copy made of all or any portion thereof in a form comprehensible to him,** except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence; (2) permit the individual to request amendment of a record pertaining to him and--

(A) Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and... (Emphasis applied.)

¹ Legal Definition: **shall** v. 1) an imperative command as in "you shall not kill. To correctly use "shall," confine it to the meaning "has a duty to" and use it to impose a duty on a capable actor. Bryan A. Garner, *A Dictionary of Modern Legal Usage* 940-941 (2d ed., Oxford U. Press 1995).

The Privacy Act of 1974 (5 U.S.C. 552a) is a code of fair information practices which mandates how federal agencies, such as the Department of Justice, maintain records about individuals. The Privacy Act requires that agencies:

1. collect only information that is relevant and necessary to carry out an agency function;
2. maintain no secret records on individuals;
3. explain at the time the information is being collected, why it is needed and how it will be used;
4. **ensure that the records are used only for the reasons given, or seek the person's permission when another purpose for the record's use is considered necessary or desirable;**
5. **provide adequate safeguards to protect the records from unauthorized access and disclosure; and**
6. **allow people to see the records kept on them** and provide them with the opportunity to correct inaccuracies in their records. (U.S. Department of Justice) (Emphasis applied.)

The Privacy Act of 1974, 5 U.S.C.A. 552a, is a federal law that places restrictions on the federal government's collection, use, and dissemination of personal information. As with most comprehensive federal statutes, the act provides general and specific exemptions as well as an administrative appeals process.

The genesis of the Privacy Act can be traced back to 1965, when a congressional subcommittee examined privacy issues. Between 1965 and 1974, other congressional committees held hearings and issued reports on how individual privacy rights were affected by the growth of national data banks and the emergence of electronic data collection and storage. An important catalyst for the legislation was a Department of Health, Education, and Welfare report on government records and computers. The report proposed a "Code of Fair Information Practices" to be followed by all federal agencies and urged the adoption of five core principles: (1) the government should not maintain any secret records; (2) **individuals must be able to see what personal information about them is stored and how it is used;** (3) **individuals must provide prior written consent before personal information collected for one purpose can be used for a different purpose;** (4) individuals must be allowed to fix or clarify personal information about them; and (5) organizations that store or use personal data must be responsible for the information's veracity and must attempt to prevent its misuse.

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Congress incorporated these principles into the Privacy Act, which applies to the executive branch of the federal government. **The executive branch encompasses administrative agencies, government corporations, and government-controlled corporations.** The act does not apply to records kept by state and local governments or by private companies or organizations. Only U.S. citizens and lawfully admitted aliens are given rights under the act.

Individuals who are denied access to their records may file an administrative appeal with the agency withholding the information. When a request for access is denied, the agency must explain the reason for the denial and must cite the specific statutory exemption...Individuals who can access their records, but who dispute the accuracy of the information, have the right to request a correction. The agency must acknowledge receipt of the request and must promptly make a determination whether or not to correct the record. If the agency denies the request, the individual may file an administrative appeal. **If that appeal is denied, the individual has the right to judicial review by suing the agency in federal court.** A lawsuit must be filed within two years from the date of the final agency denial.

As Mr. Justice Brandeis said in *Olmstead v. United States*, 277 U.S. 438 (1928), ***"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.....If the government becomes a lawbreaker, it breeds contempt for law; it invites anarchy."*** (Emphasis applied.)

DISCUSSION

Movant, **exercising his right** to review records contained in files in the possession of the U.S. Department of Probation, E.D.N.Y., has exhausted all reasonable attempts to obtain agency compliance with the provisions of the Privacy Act of 1974 and considers said agency's refusal to comply with the law to be abhorrent and, as such now is under the purview of this court, an unwarranted use of scant judicial resources.

There is absolutely no legally cognizable reason for the Director of the Administrative Courts of the United States, or the Chief U.S. Probation Officer, E.D.N.Y., to fail to comply with statutory law delineated hereinabove and permit movant the right to review and copy records pertaining to him on file at said agency.

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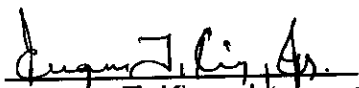
"Created in 1939, the Administrative Office of the United States Courts (AO) serves the federal Judiciary in carrying out its constitutional mission to provide equal justice under law." (Mission Statement, Administrative Office of U.S. Court's website.) (Emphasis applied.)

Arguably, Kelly and Judge Hogan's refusal and failure to comply with the provisions of the statute are an affront to Congressional authority and directives as well as an abuse of power and discretion as well as being arbitrary and capricious as they have clearly and unequivocally ignored and violated the law and their duty as federal government employees who took oaths to uphold the law, while, concomitantly and most hypocritically, are charged with the responsibility of requiring those in their charge to comply with law.

As Theodore Roosevelt said, "***No man is above the law and no man is below it: nor do we ask any man's permission when we ask him to obey it.***"

WHEREFORE, as movant has exhausted all reasonable avenues available to him to obtain the U.S. Probation Department's compliance with the governing statute herein in exercising a right granted by Congressional action, movant PRAYS this court will **ORDER** Eileen Kelly, Chief U.S. Probation Officer, E.D.N.Y. to comply with the provisions of the Privacy Act of 1974, 5 U.S.C. 552 (a), and (1.) permit movant to review the files contained by said agency pertinent to him, (2) permit him to copy any files that are not exempt, and (3.) to so do forthwith.

Respectfully submitted,


Eugene T. King, Jr., pro se
127 West 25th Street - #184
New York, NY 10001

347-326-1894

12/27/11

EXHIBIT A

September 26, 2011

Eileen Kelly
Chief United States Probation Officer
Eastern District of New York
147 Pierpont Avenue
Brooklyn, New York 11212

Re: Eugene T. King, Privacy Act Request.

Ms. Kelly:

Pursuant to the applicable provisions of the Privacy Act of 1974, 5 U.S.C. § 552a¹, the undersigned federal parolee hereby requests to review the file pertaining to him at the United States Probation Office, Eastern District of New York.

Please be advised that the undersigned was released from federal confinement on September 20, 2011 and presently resides at the Bellevue Men's Shelter, 400-430 First Avenue, New York, NY 10016 and does not receive mail thereat.

Additionally, as of September 23, 2011, the undersigned was advised that no parole officer had been assigned to his case.

Therefore, pursuant to the provision of the Privacy Act requiring acknowledgment of this request in writing, the undersigned requests that such be done by emailing the undersigned at etking815@yahoo.com.

Respectfully,



Eugene T. King

¹ Each agency that maintains a system of records shall (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence; (2) permit the individual to request amendment of a record pertaining to him and--

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and...

EXHIBIT B

VIA CERTIFIED MAIL

October 8, 2011

Eileen Kelly
Chief, United States Probation Officer
Eastern District of New York
147 Pierrepont Street
Brooklyn, NY 11201

Re: Eugene T. King, Privacy Act letter request dated September 26, 2011.

Dear Ms. Kelly:

In the letter dated September 26, 2011, mailed to you, the undersigned requested, pursuant to the applicable provisions of the Privacy Act of 1974, 5 U.S.C. §552(a)¹, to review the file pertaining to him on file at the United States Probation Office, Eastern District of New York.

On Tuesday, October 6, 2011, the undersigned, released from custody on September 20, 2011, met, for the first time, the parole officer assigned to his case, Tanya Parris, and, during this initial meeting, the undersigned mentioned the above-referenced request. Ms. Parris, who indicated that she was unaware of such and advised that any communication concerning same should be had with you.

At the time of the filing of the initial request, the undersigned was housed in the Bellevue Men's Shelter and had did not receive mail thereat.

However, on October 3, 2011, the undersigned was transferred to the Jack Ryan Shelter, 127 West 25th Street, New York, NY 10011, and assigned to the 9th Floor, bed number 184, where he can receive mail.

In light of the fact that no response to the September 26, 2011 was made either to the email address provided or my cell phone, it is hereby requested that a response to the September 26, 2011 request be forwarded to my new mailing address, or, alternatively, be made available to the parole officer assigned

¹ ¹ Each agency that maintains a system of records shall (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence; (2) permit the individual to request amendment of a record pertaining to him and--

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and... (Emphasis applied.)

to the undersigned's case in this effort to obtain your office's compliance with, and adherence to, the provisions of the Privacy Act of 1974 as the applicable provisions of the Privacy Act of 1974 requires "acknowledge[ment] in writing such receipt."

In closing, the undersigned hopes and expects this federal governmental agency to comply with the provisions of the applicable federal law this request is filed under.

Respectfully,



Eugene T. King
127 West 25th Street
Ninth Floor, Bed 184
New York, NY 10011

Cc: Administrative Office of the United States Courts
Issac Fullwood, Chairman, United States Parole Commission
Tony West, Assistant Attorney General for the Civil Division of the Department of Justice
Tanya Parris, U.S. Probation Officer, E.D. New York
File

November 12, 2011

Judge Thomas F. Hogan, Director
Administrative Office of the United States Court
One Columbus Circle, NE
Washington, D.C. 20544
12/27/2011

Re: Eugene T. King, EDNY, Privacy Act Request

Dear Judge Hogan:

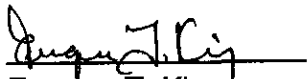
Please consider this my attempt to exhaust administrative remedies and file this complaint regarding the **refusal and failure** of the **Eastern District of New York, U.S. Probation Department's Chief U.S.P.O., Eileen Kelly**, to comply with the provisions of the **Privacy Act of 1974, 5 U.S.C. §552a**, regarding my request filed to review and copy portions of my files thereat.

Attached hereto you will find copies of two letters, dated, respectively, September 26 and October 8, 2011, requesting, pursuant to the provisions of the Privacy Act of 1974, to view and copy said files and as of the date of this letter, in contravention of the statute, absolutely no response acknowledging receipt of said request has been made.

I hereby request permission to review and copy said files pursuant to the governing statute recognizing that same has been violated and such, on the part of a law enforcement entity.

As Mr. Justice Brandeis said in **Olmstead v. United States**, "*Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.....If the government becomes a lawbreaker, it breeds contempt for law; it invites anarchy.*"

Respectfully submitted,


Eugene T. King
127 West 25th Street
New York, NY 10001

Attachments: (2)

Cc: File